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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/812,044	03/19/2001	Thomas D. Petite	81607-1130	9344

7590

08/20/2004

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EXAMINER

SAM, PHIRIN

ART UNIT

PAPER NUMBER

2661

DATE MAILED: 08/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/812,044

Applicant(s)

PETITE, THOMAS D.

Examiner

Phirin Sam

Art Unit

2661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-44 is/are allowed.
- 6) ☒ Claim(s) 45-48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 March 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 3.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities:

The specification on page 1 indicates, "This application is a continuation-in-part of U.S. Patent Application Serial No. 09/790,150". After reviewing the application (09/790,150), the examiner believes that it does not related to the instant application. However, the instant application relates to the U.S. Patent Application Serial No. 09/704,150. Therefore, the examiner requests the applicant to review the instant application and make the appropriate correction is the specification if required and also file the petition for correction.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

3. Claims 45-48 are rejected under 35 U.S.C. 101 because they are directed to non-statutory subject matter.

An invention my be patented only if it falls within one of the four statutory classes of subject matter of 35 U.S.C. § 101 with an exception to the judicially determined subject matter such as laws of nature, mathematical algorithms, scientific principles, physical phenomena, and abstract ideas. Some indirect evidence that congress intended to limit patentable subject matter to physical things and steps is found in 35 U.S.C. § 112, sixth paragraph in the MPEP. The sixth paragraph states that an element in a claim for a combination may be expressed as a "means or

step” for performing a specified function without the recital of structure, material, or acts in support thereof, and such claim shall be construed to cover the corresponding “structure, material, or acts described in the specification and equivalents thereof.” This indicates that a limitation will normally recite “structure, material, or acts.” “Structure” and “material” indicate tangible physical things made of matter, not energy. “A RF transmitted signal, the signal comprising: a receiver address; a sender address; a command code; data; and a error detector.” does not fit within the type of subject matter that was intended to be patented. If “A RF transmitted signal, the signal comprising: a receiver address; a sender address; a command code; data; and a error detector” is interpreted as an abstract arrangement “to be” transmitted, rather than a physical signal in transit between a transmitter and receiver, the signal would not fit into any of the four statutory categories because it has no physical existence. Furthermore, it would fit within the judicially recognized exception for “abstract ideas” and is nonstatutory for this additional reason. A physical signal does not fit clearly within one of the three exclusions of “laws of nature, natural phenomena or abstract ideas.” The electromagnetic wave or voltage which carries a signal is a form of natural phenomena, but the signal being carried is not naturally occurring. Some subject matter may not fall within the four statutory classes of 35 U.S.C. § 101 or within one of the exceptions. For the reasons stated above, the examiner concludes that “A RF transmitted signal, the signal comprising: a receiver address; a sender address; a command code; data; and a error detector” of claims 45-48 are not statutory subject matter under 35 U.S.C. § 101 because they are abstract ideas or because they do not fit within any of the statutory classes. It is noted that electrical signals had been around for a long time

prior to the 1952 Act as evidenced by claim 8 in O'Reilly v. Morse, 56 U.S. (15 How.) 62 (1854) to the use of electromagnetism for printing intelligible characters at any distances.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 45-48 are rejected under 35 U.S.C. 102(e) as being anticipated by Gelvin et al (U.S. Patent 6,735,630).

Gelvin et al discloses the invention (**claims 45-48**) as claimed including a RF transmitted signal, the signal (see Fig. 24, col. 26, lines 16-19) comprising:

- (a) a receiver address (see Fig. 24, element DESTINATION ADDRESS);
- (b) a sender address (see Fig. 24, element SOURCE ADDRESS);
- (c) a command code (see Fig.
- (d) data (see Fig. 24, element DATA);
- (e) a error detector (see Fig. 24, element CHECKSUM).

Gelvin et al does not disclose a command code. However, Davis discloses the command code (see col. 9, lines 14-34). At the time of the invention, it would have been obvious to a person of ordinary skill in the art to combine the command code teaching by Davis with Gelvin

et al. The motivation for doing so would have been to provide to inform the receiver that the sender wants to send a data packet read on col. 9, lines 8-9. Therefore, it would have been obvious to combine Davis and Gelvin et al to obtain the invention as specified in the claims 45-49.

Allowable Subject Matter

6. Claims 1-44 are allowed.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

(1) Mincher et al (U.S. Patent 5,604,869) discloses system and method for sending and responding to information requests in a communications network.

8. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Phirin Sam whose telephone number is (703) 308 - 9294. The Examiner can normally be reached on Monday - Friday from 8:30AM - 4:00PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Douglas W. Olms can be reached at (703) 305 - 4703. The fax number for the organization where this application or proceeding is assigned is (703) 872 - 9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

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system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at (866) 217 - 9197 (toll-free).

Respectfully submitted,

Date: August 19, 2004

A handwritten signature in cursive script, appearing to read 'Phirin Sam', written over a horizontal line.

Phirin Sam
Patent Primary Examiner